



## TEXAS DEPARTMENT OF INSURANCE

### Division of Workers' Compensation - Medical Fee Dispute Resolution (MS-48)

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## MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

### GENERAL INFORMATION

**Requestor Name**

Memorial Compounding Pharmacy

**Respondent Name**

Amerisure Insurance Co

**MFDR Tracking Number**

M4-17-2117-01

**Carrier's Austin Representative**

Box Number 47

**MFDR Date Received**

March 14, 2017

### REQUESTOR'S POSITION SUMMARY

**Requestor's Position Summary:** "I am seeking reconsideration on this bill that has been denied stating preauthorization is required. These medications do not require preauthorization and are to be retrospectively reviewed."

**Amount in Dispute:** \$1,910.72

### RESPONDENT'S POSITION SUMMARY

**Respondent's Position Summary:** "The Carriers position is that the requestors bills were properly denied based on the lack of preauthorization per Rule 134.600 as required by the DWC rules."

**Response Submitted by:** Amerisure Insurance

### SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
September 14, 2016 and September 28, 2016	Pharmacy Services – Compound	\$1,910.72	\$1,910.72

### FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and applicable rules of the Texas Department of Insurance, Division of Workers' Compensation.

**Background**

1. 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §134.502 sets out the procedures for pharmaceutical benefits.
3. 28 Texas Administrative Code §134.503 sets out the fee guidelines for pharmaceutical services.
4. 28 Texas Administrative Code §134.540 sets out the closed formulary requirements for claims subject to

certified networks.

5. Texas Insurance Code, Chapter 4201 provides requirements related to utilization review.
6. The insurance carrier reduced payment for the disputed services with the following claim adjustment codes:
  - W3 – Additional payment made on appeal/reconsideration
  - 197 – Payment denied/reduced for absence of precertification/preauthorization

### Issues

1. Is the insurance carrier's reason for denial of payment supported?
2. Is Memorial Compounding Pharmacy (Memorial) entitled to reimbursement of the disputed services?

### Findings

1. Memorial is seeking reimbursement of \$1,910.72 for a compound dispensed on September 14, 2016 and September 28, 2016. Amerisure Insurance Co denied the disputed service with claim adjustment reason code W3 – "Additional payment made on appeal/reconsideration and 197 – Payment denied/reduced for absence of preauthorization/preauthorization." 28 Texas Administrative Code §134.540(b) states that preauthorization is **only** required for:
  - (1) drugs identified with a status of "N" in the current edition of the *ODG Treatment in Workers' Comp* (ODG) / Appendix A, *ODG Workers' Compensation Drug Formulary*, and any updates;
  - (2) any compound that contains a drug identified with a status of "N" in the current edition of the *ODG Treatment in Workers' Comp* (ODG) / Appendix A, *ODG Workers' Compensation Drug Formulary*, and any updates; and
  - (3) any investigational or experimental drug for which there is early, developing scientific or clinical evidence demonstrating the potential efficacy of the treatment, but which is not yet broadly accepted as the prevailing standard of care as defined in Labor Code §413.014(a).

Provision §134.540(b)(1) preauthorization requirement is not discussed in this dispute because it was not asserted by either party in this dispute and is not applicable to the compound in question.

While not asserted by Amerisure Insurance Co, Memorial was not required to seek preauthorization pursuant to §134.540(b)(2) because none of the compounded ingredients have a status of "N" in the current edition of the ODG/Appendix A.

Amerisure Insurance Co argues that "these compound medications are *investigational and experimental*."

The determination of a service's investigational or experimental nature is not subject to the *Official Disability Guidelines* (ODG). Instead, it is determined on a case by case basis as a utilization review pursuant to Texas Insurance Code §4201.002. Further, Texas Insurance Code §4201.002(13) states that utilization review, in relevant part, "includes a system for prospective, concurrent, or retrospective review to determine the experimental or investigational nature of health care services."

The division found **no evidence** that Amerisure Insurance Co engaged in a prospective or retrospective utilization review (UR) as required by Texas Insurance Code §4201.002 in order to establish that the following compound is investigational or experimental in nature:

Compound Cream in Dispute	
Ingredient	
Cyclobenzaprine HCL	
Tramadol HCL	
Fluribiprofen	
Meloxicam	
Ethoxy Diglycol	
Bupivacaine HCL	
Versapro Cream	
Baclofen Powder	

Because Amerisure Insurance Co failed to perform UR on the above listed compound, the requirement for preauthorization under §134.540(b)(2) is **not triggered** in this case. Amerisure Insurance Co preauthorization denial is therefore not supported.

Absent any evidence that Amerisure Insurance Co presented other defenses to Memorial before medical fee dispute resolution that conform with the requirements of Title 28, Part 2, Chapter 133, Subchapter C, the division finds that the compounds in question are eligible for reimbursement.

2. 28 Texas Administrative Code §134.503 applies to the services in dispute and states, in pertinent part:

- (c) The insurance carrier shall reimburse the health care provider or pharmacy processing agent for prescription drugs the lesser of:
  - (1) the fee established by the following formulas based on the average wholesale price (AWP) as reported by a nationally recognized pharmaceutical price guide or other publication of pharmaceutical pricing data in effect on the day the prescription drug is dispensed:
    - (A) Generic drugs:  $((\text{AWP per unit}) \times (\text{number of units}) \times 1.25) + \$4.00$  dispensing fee per prescription = reimbursement amount;
    - (B) Brand name drugs:  $((\text{AWP per unit}) \times (\text{number of units}) \times 1.09) + \$4.00$  dispensing fee per prescription = reimbursement amount;
    - (C) When compounding, a single compounding fee of \$15 per prescription shall be added to the calculated total for either paragraph (1)(A) or (B) of this subsection; or
  - (2) notwithstanding §133.20(e)(1) of this title (relating to Medical Bill Submission by Health Care Provider), the amount billed to the insurance carrier by the:
    - (A) health care provider; or
    - (B) pharmacy processing agent only if the health care provider has not previously billed the insurance carrier for the prescription drug and the pharmacy processing agent is billing on behalf of the health care provider.

The compounds in dispute were billed by listing each drug included in the compound and calculating the charge for each drug separately as required by 28 Texas Administrative Code §134.502(d)(2).

Reimbursement is calculated as follows:

**Date of Service September 14, 2016**

Ingredient	NDC & Type	Price/Unit	Total Units	AWP Formula §134.503(c)(1)	Billed Amt §134.503 (c)(2)	Lesser of (c)(1) and (c)(2)
Cyclobenzaprine	38779039509 Generic	\$46.33	1.8 gm	$\$46.33 \times 1.8 \times 1.25 = \$104.24$	\$83.39	\$83.39
Tramadol HCL	38779237409 Generic	\$36.30	6 gm	$\$36.30 \times 6 \times 1.25 = \$272.25$	\$217.80	\$217.80
Flurbiprofen	38779036209 Generic	\$36.58	4.8 gm	$\$36.58 \times 4.8 \times 1.25 = \$219.48$	\$175.58	\$175.58
Meloxicam	38779274601 Generic	\$194.67	0.18 gm	$\$194.67 \times 0.18 \times 1.25 = \$43.80$	\$35.04	\$35.04
Ethoxy Digycol	38779190301 Generic	\$0.34	3 gm	$\$0.34 \times 3 \times 1.25 = \$1.28$	\$1.02	\$1.02
Bupivaine HCL	38779052405 Generic	\$45.60	1.2 gm	$\$45.60 \times 1.2 \times 1.25 = \$68.40$	\$54.72	\$54.72
Compounding Fee	NA	NA	NA	\$15.00	\$15.00	\$15.00
Versapro Cream	38779252903 Generic	\$3.20	45.02 gm	$\$3.20 \times 45.02 \times 1.25 = \$180.08$	\$144.06	\$144.06
Baclofen Powder	69746010395 Generic	\$80.00	5 gm	$\$80.00 \times 5 \times 1.25 = \$500.00$	\$457.50	\$457.50
					Total	\$1,184.11

**Date of Service September 28, 2016**

Ingredient	NDC & Type	Price/Unit	Total Units	AWP Formula §134.503(c)(1)	Billed Amt §134.503(c)(2)	Lesser of (c)(1) and (c)(2)
Compounding Fee	NA	NA	NA	\$15.00	\$15.00	\$15.00
Versapro Cream	38779252903 Generic	\$3.20	45.02 gm	$3.20 \times 45.02 \times 1.25 = \$180.08$	\$144.06	\$144.06
Ethoxy Diglycol	38779190301 Generic	\$0.34	3 gm	$0.34 \times 3 \times 1.25 = \$1.28$	\$1.02	\$1.02
Bupivacaine HCL	38779052405 Generic	\$45.60	1.2 gm	$45.60 \times 1.2 \times 1.25 = \$68.40$	\$54.72	\$54.72
Cyclobenzaprine HCL	38779039509 Generic	\$46.33	1.8 gm	$46.33 \times 1.8 \times 1.25 = \$104.25$	\$83.39	\$83.39
Tramadol HCL	38779237409 Generic	\$36.30	6 gm	$36.30 \times 6 \times 1.25 = \$272.25$	\$217.80	\$217.80
Flurbiprofen	38779036209 Generic	\$36.58	4.8 gm	$36.58 \times 4.8 \times 1.25 = \$219.48$	\$175.58	\$175.58
Meloxicam	38779274601 Generic	\$194.67	0.18 gm	$194.67 \times 0.18 \times 1.25 = \$43.80$	\$35.04	\$35.04
					Total	\$726.61

The total allowable reimbursement for the compound in dispute is \$1,910.72. This amount is recommended.

### **Conclusion**

For the reasons stated above, the division finds that the requestor has established that additional reimbursement is due. As a result, the amount ordered is \$1,910.72.

### ***ORDER***

Based on the submitted information, pursuant to Texas Labor Code Section 413.031 and 413.019 (if applicable), the division has determined the requestor is entitled to additional reimbursement for the disputed services. The division hereby ORDERS the respondent to remit to the requestor \$1,910.72, plus applicable accrued interest per 28 Texas Administrative Code §134.130, due within 30 days of receipt of this order.

### **Authorized Signature**

Signature	Medical Fee Dispute Resolution Officer	8/17/2017 Date
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### ***YOUR RIGHT TO APPEAL***

Either party to this medical fee dispute has a right to seek review of this decision in accordance with Rule §133.307, effective May 31, 2012, *37 Texas Register 3833*, **applicable to disputes filed on or after June 1, 2012.**

A party seeking review must submit a **Request to Schedule a Benefit Review Conference to Appeal a Medical Fee Dispute Decision** (form **DWC045M**) in accordance with the instructions on the form. The request must be received by the division within **twenty** days of your receipt of this decision. The request may be faxed, mailed or personally delivered to the division using the contact information listed on the form or to the field office handling the claim.

The party seeking review of the MFDR decision shall deliver a copy of the request to all other parties involved in the dispute at the same time the request is filed. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §141.1(d).

**Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.**